

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BILLUPS P. PERCY,

Plaintiff,

- against -

INSIDE EDITION INC.,

Defendant.

Docket No. 18-cv-07060

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Billups P. (Phin) Percy (“Percy” or “Plaintiff”), by and through his undersigned counsel, as and for his Complaint against Defendant Inside Edition Inc., (“Inside Edition” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted video of Anthony Hayes owned and registered by Percy, a Louisiana-based photojournalist. Accordingly, Percy seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or is doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b).

PARTIES

5. Percy is a professional photojournalist in the business of licensing his photographs and videos to online, print, and television stations for a fee, having a usual place of business at 2357 Cours Carson Street, Mandeville, Louisiana 70448. Percy's photographs and videos have appeared in many publications around the United States.

6. Upon information and belief, Inside Edition is a corporation duly organized and existing under the laws of the State of New York, with a place of business at 51 West 52nd Street (19-13), New York, New York 10019. Upon information and belief, Inside is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material hereto, Inside Edition has owned and operated a website at the URL: www.insideedition.com (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Video

7. On December 26, 2005, Percy videoed Anthony Hayes wielding a knife while surrounded by NOPD police officers (the "Video"). True and correct screenshots of still frames from the Video is attached hereto as Exhibit A.

8. Percy is the author of the Video and has at all times been the sole owner of all right, title and interest in and to the Video, including the copyright thereto.

9. The Video was registered with the U.S. Copyright Office and was given Copyright Registration Number PA 1-989-123. See Exhibit B.

B. Defendant's Infringing Activities

10. Upon information and belief, on or about April 12, 2016, Inside Edition ran an article on the Website entitled *Star Will Smith's Final Moments Has Been Released*. See <http://www.insideedition.com/headlines/15813-surveillance-footage-of-former-nfl-star-will-smiths-final-moments-has-been-released>. (the "Article") The Article prominently featured the Video. A true and correct copy of screenshots showing portions of the video as published in the Article is attached hereto as Exhibit C.

11. Inside did not license the Video from Plaintiff for its article, nor did Inside have Plaintiff's permission or consent to publish the Video on its Website.

12. Upon information and belief, Inside removed Percy's gutter credit and did not attribute the Video to anyone.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST INSIDE)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. Inside infringed Plaintiff's copyright in the Video by reproducing and publicly displaying the Video on the Website on, upon information and belief, its Television News Show under the name "Inside Edition." Inside Edition is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Video.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Inside have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a result of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to recover his/her damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

18. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

SECOND CLAIM FOR RELIEF
INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST INSIDE
(17 U.S.C. § 1202)

19. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-18 above.

20. When the Video was displayed under license on television on December 26, 2005, the Video contained copyright management information under 17 U.S.C. § 1202(b).

21. Upon information and belief, in its article on the Website, Inside Edition intentionally and knowingly removed copyright management information identifying Plaintiff as the videographer of the Video.

22. The conduct of Inside violates 17 U.S.C. § 1202(b).

23. Upon information and belief, Inside's falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

24. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Inside intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Video. Inside also knew, or should have known, that such falsification, alteration and/or removal

of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Video.

25. As a result of the wrongful conduct of Inside as alleged herein, Plaintiff is entitled to recover from Inside the damages that s/he sustained and will sustain, and any gains, profits and advantages obtained by Inside resulting from its violations of 17 U.S.C. § 1202, including Plaintiff's attorney's fees and costs.

26. Alternatively, Plaintiff may elect to recover from Inside statutory damages pursuant to 17 U.S.C. § 1203(c)(3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Inside be adjudged to have infringed upon Plaintiff's copyrights in the Video in violation of 17 U.S.C §§ 106 and 501;
2. That Defendant Inside be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202;
3. That, with regard to the First Claim for Relief, Plaintiff be awarded his/her actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Video;
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
 - a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management

- information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);
5. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
 6. That Plaintiff be awarded his costs, expenses and attorney's fees pursuant to 17 U.S.C. § 1203(b);
 7. That Plaintiff be awarded pre-judgment interest; and
 8. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
August 6, 2018

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